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June 3, 1999

**FOR SETTLEMENT PURPOSES ONLY
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UNDER FRE 408**

Sherry Estes, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard (C-29A)
Chicago, Illinois 60604

Re: Queen City Barrel - Skinner Landfill, West Chester, Ohio – *De Minimis*
Settlement

Dear Ms. Estes:

We are legal counsel to Queen City Barrel in connection with the above-referenced matter. As you may be aware, Queen City Barrel entered into a *de minimis* settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action pending in the United States District Court for the Southern District of Ohio. In addition to providing for, among other things, settlement of Plaintiffs' claims for past and future costs and expenses incurred and to be incurred at or in connection with the Skinner Site, that agreement requires certain of the Plaintiffs to attempt to negotiate a *de minimis* settlement between Queen City Barrel (and all other settling *de minimis* parties) and the United States (on behalf of U.S. EPA) that is at least as protective of the Company's interests as are the terms of U.S. EPA's Model *De Minimis* Consent Decree set forth in the December 7, 1995 *Federal Register*.

It is Queen City Barrel's understanding that U.S. EPA Region V has now determined that the Agency can proceed with *de minimis* settlement negotiations and has identified what information it will require in order to confirm that Queen City Barrel qualifies for a *de minimis* settlement at this Site. We understand that the required information consists of: (i) the summary of each *de minimis* settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Site Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each *de minimis* settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

FROST & JACOBS LLP

Sherry Estes, Esq.

June 3, 1999

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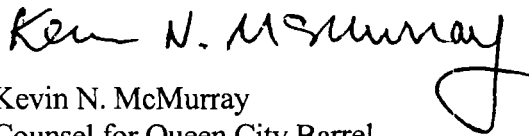
Accordingly, I am enclosing the information requested by U.S. EPA for Queen City Barrel. I believe that this information amply demonstrates that Queen City Barrel is entitled to a *de minimis* settlement consistent with U.S. EPA's model *de minimis* consent decree. Queen City Barrel understands that U.S. EPA and the Plaintiffs will allocate among themselves the monies to be paid by Queen City Barrel and the other *de minimis* settlors in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, Queen City Barrel does not acknowledge any liability for response costs at the Skinner Site.

In order to ensure that Queen City Barrel is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, the Company strongly urges EPA to finalize an appropriate *de minimis* settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and EPA's *de minimis* settlement policies, as well as provide needed funds for response actions at the Skinner Site.

If you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

FROST & JACOBS LLP



Kevin N. McMurray
Counsel for Queen City Barrel

KNM:llb

Enclosures

cc: Mr. Edward Paul (w/encls.)

RECEIVED

MAY 24 1999

Queen City Barrel

SNH

Settlement Amount: \$2,000.00

Excerpt from Allocator's Preliminary Report :

Queen City Barrel reconditions empty 55-gallon steel drums. It has had only one facility (located on South Street) during the relevant time period. The facility opened in 1927 and has had only one owner and operator.

QCB explains that steel drums can be used over and over and then reclaimed as steel scrap. During the 1970s and 1980s, it was normal practice for the company to pay \$3.00 to \$5.00 per drum from suppliers. QCB says that it conducted a thorough investigation in 1991 in response to an EPA 104(e) information request. At that time, it did not locate any records that showed that QCB transported any waste or drums to the Site. QCB further argues that there would be no reason to transport steel drums to any landfill because of the steel scrap value. Drums damaged during the reconditioning process were crushed and disposed of as solid waste, QCB stated.

The 1991 104(e) response states that QCB reviewed hazardous waste manifest records and accounts payable records for the time period 1979-91. The Skinner Landfill name did not appear in these records for this time period. The response identified five persons consulted in preparing the response: Edward Paul (President), Walter Archinal (General Manager), Donald Hayden (Plant Engineer), John Wales (Vice President of Finance), and Thomas Young (Special Projects Supervisor). QCB told EPA that it generated burner ash, caustic sludges and baghouse dust as part of its operations.

Among transporters, QCB said in its response to EPA that it used King which, the response says, disposed of QCB's waste at the Elda Landfill, the Rumpke Landfill, and, when in operation, the Cincinnati City Incinerator. Messrs. Paul, Archinal, Hayden, and Young were responsible for selecting these sites, the response to EPA stated.

Bavarian, a transporter from Walton, Kentucky, disposed of wastes at its facility in Walton. Messrs. Young and Hayden selected this site. EnviroSafe also disposed of waste at its site in Oregon, Ohio. A Mr. Antonio Domanico originally selected this site. The EPA response does not explain the role of Mr. Domanico.

The questionnaire response (question 32) states that Craig Feltner, Vice President, and John Stephens, Corporate Manager Environmental Affairs, were interviewed to prepare the questionnaire response.

In a supplemental letter from counsel for QCB, QCB asserted that "all of the facility's records were reviewed and the individuals identified in the 1991 submission and the current employees identified under question 32 were interviewed regarding any recollection of the Skinner site."

QCB further explained that the Company had formal accounts with numerous businesses located in and around the Cincinnati area. Many different companies in this area sold their empty drums and barrels to QCB for reconditioning. Employees of the company dealt directly with the customers' representatives in and around the Cincinnati area. Empty drums and barrels were stored at each customer's location until QCB was called to pick up the drums. Certain accounts were serviced regularly due to the large number of empty drums generated. Other accounts were serviced sporadically.

Queen City required the drums and barrels to be "RCRA-empty" as required by 40 C.F.R. § 261.7. Residues in open-top drums and barrels were incinerated at the Cincinnati facility, and the resulting ash was disposed of at the facilities as identified in the EPA response. Closed-top drums and barrels did not go through the incinerator, but were instead washed with a strong caustic solution. The resulting wastewater stream is pretreated and then discharged to the City of Cincinnati sewer system.

QCB examined drums before accepting them for reconditioning. Any drums or barrels which were damaged during the reconditioning process or which were subsequently determined at the Cincinnati facility not to be capable of being reconditioned were crushed and disposed of as solid waste, using the transporters and in the facilities identified in the 1991 investigation, according to the letter from counsel.

The company may receive dozens of one time phone calls from sources that are not regular customers during any month. A representative will visit the source to determine the quantity and quality of the drums before accepting them. QCB says that it is possible that from time to time the operators of the Skinner Landfill would contact QCB for reconditioning services. Whether such drums or barrels first came into the Landfill with waste in them and were emptied at the Landfill prior to selling them to QCB is irrelevant to QCB's potential liability, QCB asserts. Any barrels or drums accepted for reconditioning by QCB would not have been damaged, it further argues. All damaged drums or barrels would have remained at the Landfill, it says.

Site Witnesses. Elsa Skinner testified QCB was the source of damaged drums brought to the Landfill:

Q. What I'm trying to understand is whether you know that they brought in drums?

A. Yes, they brought in some but they were always damaged. I don't know what was inside of them or if anything was.

Q. I understand that.

A. But they were damaged.

Q. What I'm trying to understand is whether Queen City Barrel brought in drums.

A. Yes, they did. So did the other, Cincinnati.

E. Skinner Depo., p. 94-95. She could not estimate the number of times that QCB brought in damaged drums or say whether such drums contained anything. She did say that QCB came in at least once for disposal of damaged drums during a period of time in which QCB was also buying drums from the Landfill. E. Skinner Depo., p. 119-121.

Maria Roy saw a truckload of barrels brought to the Site that John Skinner told her came from QCB. She put the time of this event in the late 1960s or early 1970s. M. Roy Depo., p. 297-99.

Ray Skinner said that QCB brought in drums in loads of 20-30 drums. He said that he talked to drivers and saw the name on the truck. He described a flat bed truck with stakes. The drums were stacked "two rows high." He was not sure of the number of loads brought in, or the time period. He described drum contents as including "liquids," sandy stuff and papers. He said that QCB used the Site as far back as Cincinnati Drum (the 1950s). He could not explain why a drum reconditioner would bring drums to the Skinner Landfill. Later, he said that QCB was "in there" several times. R. Skinner Depo., p. 643-646, 1238-1242. Ray Skinner's specific testimony at the end of his deposition was:

Q. When you said several times just a second ago, over a number of years, I don't know how to deal with that.

I'm trying to understand how I can try to calculate.

A. I seen them several times in and out. I can't estimate how many loads. And the drums was never full. It's hard to say. You might have got a yard or two yards out of a whole load dumped out.

Q. This is when you cleaned them out, you mean?

A. Yes, sir.

Q. Did these drums typically have liquid residues as opposed to solid?

A. Liquid or solid or a sandy looking stuff. It was just -- it was everything in the drums, paper, buckets. It was everything in the drums.

Q. But that would come from Queen City?

A. Yes, sir.

Q. As opposed to from other sources?

A. From Queen City.

Q. From Queen City?

A. Plus we cleaned out other drums.

Q. I know that. I know that part. I know that part. I'm just trying to focus on the -- either damaged drums or drums that

you cleaned out for Queen City.

A. Yes.

Q. I'm just trying to get a handle on the number of loads. Is it at least a load a month? A load a year?

A. I would say.

Q. A load every six months? What are we talking about?

A. I would feel comfortable with at least a load a month. I could honestly feel comfortable. But I would say there was a lot more.

Q. At least a load a month where they were delivering drums to you to have them do something with them?

A. Yes, my father would.

R. Skinner Depo., pp . 1240-42.

QCB explained that it had no records of any dealing with the Landfill, that no other witness remembered QCB, and that the Skinner family members' recollections were either unreliable, confused, or inconsistent (when related to prior administrative testimony or interviews). It does not doubt that it may have been to the Landfill to purchase drums. It also does not doubt that it may have rejected damaged drums which then would have likely been disposed of at the Landfill. But it says that the Skinner testimony is simply not believable.

This is another difficult compilation of information to interpret. Like it or not, QCB is facing direct evidence of disposal which it disputes. That is why trials occur. Once again, I will try to make a judgment about what I have heard and read to facilitate the resolution of QCB's involvement in this matter.

Waste-in Amount. I am going to assume that 1 cy of waste resulted from each clean out of drums or load of damaged drums that reached the Site to account for the testimony of Ray Skinner and Elsa Skinner. I am going to assume that this happened 10 times, and assign QCB 10 cys of waste. For purposes of characterization, I am placing this waste into the "solid" waste category.

Excerpt from Allocator's Final Report :

See the Avon Products, Inc. discussion.

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste in Cys	Liquid Waste in Gallons	Solid Waste In Total Cys 372906	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem Dyne	Rest of Chem- Dyne	Total
QUEEN CITY BARREL	10	0	372906	0.0027%	262252	0.0000%	0.00%	0.00%			0.00027%